CORRESPONDENCE.

Mr. William Leigh, of Danville, Va., has called our attention to the case of Chapman's Adm'x *v.* Norfolk & Western Railway Co., in which the lower court directed a verdict where the evidence disclosed contributory negligence as a matter of law; and the court of appeals refused a writ of error. Further comment here is unnecessary, as our views on this growing practice, expressed in a note to Taylor *v.* B. & O. R. Co., 14 Va. Law Reg. 769, have undergone no change since that time.

MISCELLANY.

Selection of Local Judges by the Local Bars.—Though the lateness of the hour prevented its consideration, the resolution offered last night at the meeting of the Richmond Bar Association by George Bryan, looking to a higher and more ethical method of filling the city judgeships, was undoubtedly in accord with the wishes of an overwhelming majority of the lawyers of the city. The resolution directs that candidates for such positions shall positively refrain from seeking pledges of support in any way, and that in the selection of the wearers of the ermine the members of the Richmond bar shall act judicially, rather than as individuals approachable by the requests of advocates of the various candidates for the municipal bench.

While by this resolution no reflection could be inferred in regard to the present judges, it was the predominating sentiment of the Bar Association that the proposition would work to the benefit of all interested in the future, and that the proposed step is in better accord with the ethics of the legal profession than the present mode.

The association, after listening with great interest to the remarks of the author of the resolution, Mr. Bryan, finally adjourned. A small warfare of parliamentary quibble had consumed so much of the time that it was thought best to leave the matter for the consideration of the next meeting, when Mr. Bryan will again introduce his resolution.

Stating the Case.—"At the present time our local judgeships are filled by incumbents who give every indication of good health and manifest no intention of resigning," said Mr. Bryan. "It is certainly proper, therefore, that a subject be now discussed which affects us all closely as lawyers and to the discussion of which at this time no exception can be taken upon the ground that it involves personal considerations, for a moment's thought will show that it does not in the slightest degree.

"Under a custom which has long obtained, the Legislature of Virginia has elected and in the vacation of the Legislature, the Governor

has appointed to vacant judgeships in the city of Richmond the nominees of the bar of the city. This is an application of the principle of home rule which cannot be too highly commended. Underlying it, however, there is unquestionably the desire of the appointing power to secure the most capable men for the positions and to leave the selection to those who are presumably the best qualified to make it, namely, the members of the bar. There is, however, imposed upon the bar by these conditions an important reciprocal obligation, namely to make the choice judicially and without the pressure of personal solicitations and 'canvassing.' However, it may be as to other offices, no man should be elected to a judgeship because he 'needs the job' or because he is 'a good fellow,' or because he is a member of a family of large social influence or because he has for many years been a faithful member of a political party or section of a party, but only because he is a man of high character, is learned in the law, possesses judicial temperament, and last, but by no means least, is courteous in demeanor. The choice of a man possessing these requisites is especially within the province of his fellow lawyers, who because of their peculiar opportunities are intimately acquainted with the mental, moral and temperamental characteristics of their brethren.

Judgment of the Bar.—"How then can the judgment of the bar be most wisely arrived at and expressed? It seems to me by placing itself on record to the effect that in future elections or recommendations by it to the electing or appointing power, it will discourage all efforts of the candidates or their friends to solicit votes and 'pledge up' a support, and will, on the contrary, recommend, and indeed require, that the candidates content themselves with the mere announcement of their candidacy and leave the rest to the bar, without other effort to influence its choice. In other words, that upon the occurring of a vacancy or the creation of a new judgeship, the president of the City Bar Association shall call a meeting of the bar of the city after reasonable notice, for the purpose of making a recommendation, and that it shall be the understanding that at this meeting the members of the bar, having previously refrained from committing themselves to any candidate, shall be requested to vote for the man who is in their opinion best qualified for the position.

"Will it be said that this is ideal? Our profession is distinctly one of high ideals. We are governed by an ideal standard of professional ethics, which is carefully observed by members of our State and city associations. Why should we not, therefore, apply to certainly one of the most important features in our professional life—the selection of the judges before whom we are to practice—a method of ascertaining the judgment of the bar which must yield the best results? If fairness and disinterestedness and permanent relief from the painful and often distressing duty of choosing between two or more intimate friends are to be deemed worth while, such a method would seem to be

eminently practical. In other words, if we are to select a judge, why should we not act judicially?

Offers Resolutions.—"To this end I offer the following:

"Resolved, That it is the sense of the Bar Association of the city of Richmond that hereafter when there shall be vacancies in any of the city judgeships, as to the filling of which the proper electing or appointing power may be guided by the wishes of the bar of the city, those who aspire to the office will commend themselves to the favor of the profession by the simple announcement of their candidacy and by abstaining from efforts to secure pledges of support from members of the bar.

"Resolved, That it is also the sense of the association that the best results will be obtained if members of the bar under such conditions shall refrain from committing themselves to any candidate.

"This is as far as we need, or, indeed, can properly go. It only remains for me to state expressly what I trust has been understood throughout my remarks, that neither by them nor the resolutions do I intend to make a criticism of or a reflection upon any of the elections which we have had. On the contrary, they have been eminently fair, and in entire accordance with the recognized methods of friendly contest. My desire is only to improve those methods, if it be practicable, and to ask the Bar Association of the city of Richmond to take a step which will certainly relieve its members of great personal embarrassment, and which may at the same time form a precedent for imitation by others—not only similar associations, but, under suitable conditions, legislative and executive appointing powers.

"I may add that at a recent meeting of the Norfolk Bar Association, the following was adopted:

" 'Resolved, That it is the sense of this association that hereafter no petitions recommending members of the bar for official positions should be circulated among the members of the association, but that if it is deemed desirable by the members of the association that the bar should take action in recommending a particular candidate, such action be taken at a meeting of the association called for the purpose.' "—Richmond Times-Dispatch, October 15, 1909.

Protection and Foreign Working of Patents.—Like a good many other revolutions, that supposed to have been effected by Mr. Lloyd-George's Patents and Designs Act of 1907 does not appear to have produced any of the larger economical consequences which were predicted of it. As a political Act it may be viewed by some as a great success, and there is something to be said for it as a piece of consolidatory legislation; but its supposed effect as a measure of protection for British workers and inventors has not been made evident. It came into operation in August, 1908, and during the first seven months of this year the number of foreign patents applied for was

17,869, as against 16,303 in the corresponding period of 1908, showing an increase of 1,566 applications during the period. Nor can it be said that the increase was owing to any temporary falling-off resulting from the passing of the Act in 1907, for the number of applications is substantially larger than in the corresponding months of the latter year. The fact is that foreign inventors have not been discouraged by the supposed drastic provisions of the Act directed against the working abroad of English patents, and a reference to the figures, which have now been published, showing the first year's working of the Act proves that there is nothing of a protectionist character in these provisions. The much-discussed section 27, which gives power to any person to apply to the Comptroller-General for the revocation of a patent on the ground that the patented article is manufactured exclusively or mainly abroad, has given rise during the first year of its operation to sixty-nine applications for revocation of foreign patents, but in ten cases only were orders for revocation made by the Comptroller-General, and two of these orders were revoked on appeal to the judge, so that the final number of patents revoked was only eight. Most of the applications were withdrawn or allowed to lapse. Here, indeed, the objections of those who opposed "the informer's clause," as it has been called, receive a measure of justification; for there can be no doubt that the power given to "any person" to make applications involving the disclosure of all the arrangements for the working of a patent and the extent of the business done with it here and abroad lends itself to the processes of blackmail. Much of this objection has been removed by the new Rules issued within the last few months, as the result of an intimation from Mr. Justice Parker on the hearing of the appeals against the Comptroller-General's orders which were brought into Court; but we should not be surprised if, with the removal of the unfairness to which inventors and those who manufacture under them are exposed, there was a perceptible drop in the number of applications for revocation, so that these much overrated provisions become almost a negligible quantity in the actual working of patents.—London Law Journal.

Treasure-Trove.—Treasure-trove is defined by Blackstone, "where any money, coin, gold, silver, plate, or bullion is found hidden in the earth or other private place, the owner thereof being unknown." The treasure so found belongs to the Crown by ancient prerogative, and so anxiously was the right guarded of old that concealment of a find was a capital felony. But the Crown's claim is closely restricted to treasure which has been hidden, for it is the hiding and not the abandonment that gives the King the property. In other cases the principle applies that finding is keeping. It is therefore necessary for the Crown to show that the treasure was found buried below the surface of the ground; but when it has satisfied this condition the pre-

sumption is that it is entitled, though another theory be set up that the articles were not intentionally concealed (cf. The Attorney-General *v.* The Trustees of the British Museum (1903)). Two alleged cases of treasure-trove have recently come to light which, in view of the recent investigation into the antiquities of the law upon the subject by the Royal Commission on Coroners, are of some general interest. In the first, a gentleman living at Reading found in his garden a George II. guinea, which is supposed to have been conveyed in some loam from the neighbourhood. In the second, the coroner at Yeovil, in Somerset, held an inquest upon an ancient British torque or neck-chain, which was discovered surrounded by clay, and sold to the Somerset Archæological Society for £40. It is one of the duties prescribed in the Coroners Act that wherever treasure is found the coroner shall summon a jury of twelve men to search into the matter, and declare who is the finder and who the owner. It is not the business of the jury to decide who is entitled to the treasure, whether the owner, the lord of the manor, or another (The Attorney-General *v.* Moore (1893)); but the coroner in this case seems to have been in error in directing the jury that they had not to decide whether the article was treasure-trove or not. It is true their decision is not final, but they should consider the question, and, following the authority of the British Museum case, where part of the property claimed by the Crown was a torque of the same kind found in the ground, it would seem that their verdict in this case should have been for the Crown. They stated, however, that there was no evidence that in ancient times the chain had been hidden. The title of the Crown arises, indeed, without the finding of a coroner's jury, directly upon the discovery of the treasure, and it is probable that it will be assisted here to secure the right of pre-emption to the British Museum. It is the usual practice of the Treasury to allow the finder nine-tenths of the full value of the treasure, and in some cases its rights are not asserted at all; but where there is a find which has interest for the whole nation it is desirable that the object found should be located where most people can see it, and to this end the maintenance of the Crown's ancient rights is generally beneficial.—London Law Journal.

Paraphernalia.—Paraphernalia may now be reckoned among the antiquities of the law, and it has been suggested by some text-writers that the Married Women's Property Act has practically abolished the right to them. The word is etymologically a Greek one, meaning the goods which came to the husband in addition to the dowry, and was applied in English law to the apparel and ornaments suitable to her rank and degree which the husband provided for his wife, and which, if not disposed of by him in his lifetime, remained to her on his death, and did not pass to his representatives, though

liable for his debts. Before the Act of 1882 the personal chattels of the wife became the absolute property of the husband unless specially settled on her, but by the Common Law the widow acquired a title to goods of this special personal character which she had enjoyed during the coverture. Some misunderstanding has grown up about the Common Law right, which the Court of Appeal cleared up in a recent case which came up from the County Court (Masson-Templier & Co. *v.* De Fries). Creditors of the wife had seized her wearing apparel to satisfy a judgment against her. The husband claimed it as paraphernalia; and an interpleader summons having been issued to try the question of ownership, the judge had directed the jury to decide whether the dresses were given to the wife so as to become her separate property, or only as paraphernalia, for her use so long as the husband chose. The jury found that the goods were the property of the husband, and the Divisional Court held that there was some evidence to justify the finding; but the Court of Appeals, being of opinion that the introduction of "paraphernalia" was only calculated to puzzle the jury, allowed the appeal of the creditors. The Master of the Rolls pointed out there can be no question of paraphernalia during the husband's life, and he criticised certain dicta of Sir Francis Jeune in Tasker *v.* Tasker (1894), which gave countenance to another view. Now that a married woman can hold separate property, the presumption is that the goods which she buys with money given to her by her husband are hers. Evidence may be given to rebut this presumption, but her possessory title is not qualified by any doctrine of paraphernalia, which was intended to add to and not to diminish a woman's proprietary rights. During the husband's life jewels and apparel which she acquires stand on the same footing as any other kind of property. And it is a moot point upon which the Court did not express an opinion whether a widow, upon her husband's death, can still claim paraphernalia in respect of articles which were not her property in his lifetime.—London Law Journal.